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General and complete disarmament: implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction

Security Council
Seventy-second year

Letter dated 24 October 2017 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General*

I have the honour to transmit herewith an assessment of the Russian Federation regarding the investigative methods employed by the Organisation for the Prohibition of Chemical Weapons fact-finding mission in relation to an alleged incident involving the use of a chemical weapon in Khan Shaykun (Syrian Arab Republic) on 4 April 2017 (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 99 (l), and of the Security Council.

(*Signed*) V. Nebenzia

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Annex to the letter dated 24 October 2017 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General

[Original: English]

Assessment of the investigation methods of the alleged CW's use in Khan Shaykhun 4 April, 2017

On the Note by the OPCW Technical Secretariat (hereinafter "Secretariat") "Further clarifications why the OPCW Fact-Finding Mission did not deploy to Khan Shaykhun" (S/1545/2017 dated 17 October 2017, hereinafter "the Note").

It is well-known that investigations in cases of alleged use of chemical weapons should be conducted in accordance with the provisions of Part XI of the Annex on Implementation and Verification to the CWC and the procedures that are to be established by the Director-General (Part XI, Paragraph 1).

During the investigation samples of importance include toxic chemicals, remnants of munitions and devices, environmental and biomedical samples (Part XI, Paragraph 17). The baseline principle of an investigation is compliance with the chain of custody, set out in the CWC, the OPCW manual, including the Secretariat's document "The chain of custody and documentation for OPCW samples on-site", dated 12 August 2013, pursuant to which "in case that the integrity of a sample is questionable (when there has been a time when the sample was not under the OPCW custody) ... such a sample will not be accepted for OPCW verification purposes". As it is stated in the FFM report (S/1510/2017 dated 29 June 2017) this principle was not observed in relation to the samples made available by the interviewees ("lacking full chain of custody by the team"). So, to our regret, in accordance with the abovementioned document, we cannot accept the argument that "the FFM, as applicable, adheres to the most stringent OPCW guidelines and procedures, including those regarding chain of custody ... from the time of collection or receipt of evidence, including samples, by the FFM" (Paragraph 7 of the Note).

The only material evidence collected by the FFM experts (even those on the territory of a "neighbouring country") are biomedical samples. However they only testify that the victims suffered from Sarin or a Sarin-like substance. They do not provide any answers to the questions about where and under what circumstances that exposure happened, as well as who these people — (the "donors") actually were.

As it is stated in the Note the Director-General, referring to the unfavourable security situation, decided that the FFM would not undertake an on-site visit to Khan Shaykhun. So, the FFM "team could not ... observe, assess or record the location of the alleged incident, could not canvass directly for other witnesses, and could not collect environmental samples and/or remnants of the alleged munitions" (Paragraph 3.13 of the Report, S/1510/2017 dated 29 June 2017). Therefore the only conclusion is possible: the FFM did not succeed in obtaining key material evidence.

Hence all the other conclusions of its work are based not on primary but indirect evidence, the overwhelming majority of which was "kindly" provided to the FFM by individuals from the opposition forces hostile to the government of Syria and NGOs that had completely discredited themselves, such as the "White Helmets".

Bearing in mind that Paragraph 6 of the UN Security Council Resolution 2209 (2015) and Paragraph 7 of the UN Security Council Resolution 2235 (2015) contain

a call on all parties in Syria to extend their full cooperation to the OPCW Fact-Finding Mission, one can clearly state that the armed groups controlling the area where Sarin was used on April 4, 2017 and failing to provide access to the international experts were in reality not interested in conducting a full-fledged investigation. It is perplexing that in the report presented to the OPCW Executive Council and then transferred to the UN Secretary-General the FFM did not even mention the forces that had denied such an access to the team despite the assurances of the General Coordinator of the "High Negotiations Committee of the Syrian Opposition" Riyad Hijab addressed to the Chair of the UN Security Council.

Unlike Khan Shaykhun, the security conditions cannot in any case be used as a justification of the FFM refusal to visit the "Shayrat" airbase. As early as the beginning of April the Government of Syria gave official guarantees to provide a safe access to this facility. Moreover, Damascus demanded for such a visit to be organised immediately, thus confirming the readiness to comply with its obligations deriving from Paragraph 12 of the FFM Terms of Reference (Annex to the Note by the OPCW Secretariat S/1255/2015 dated 10 March 2015) and Paragraph 15 of Part XI of the Annex on Implementation and Verification to the CWC. It states clearly that "the inspection team (of the OPCW) shall have the right of access to any and all areas which could be affected by the alleged use of chemical weapons", as well as to "locations it deems relevant to the effective investigation of the alleged use of chemical weapons". Besides, as it is reasonably outlined in the Note (Paragraph 4), the requirement for the FFM "to study all available information relating to allegations of the use of chemical weapons in Syria" is also present in the OPCW Executive council decisions EC-M-48/DEC.1, dated 4 February 2015 and EC-M-50/DEC.1, dated 23 November 2015, as well as in the UN Security Council Resolution 2209 (2015). The latter documents provide the FFM with a much broader mandate than set out in its Terms of Reference. Nevertheless, the Mission did not even consider it necessary to analyse, confirm or disprove the information by some Member States about the alleged delivery of Sarine-filled munitions by Syrian planes from the "Shayrat" airbase.

The FFM clearly evaded fulfilling its mandate in the issue of providing Damascus with the duplicates of all the environmental and biomedical samples collected, according to the opposition, in Khan Shaykhun. The provision on handing the duplicates is enshrined in Paragraph 14 of the FFM Terms of Reference and Paragraph 18 of Part XI of the Annex on Implementation and Verification to the CWC. Specific procedures are regulated by the OPCW document titled: "Standard operating procedure off-site analysis of authentic samples" dated 1 November 2011. However this requirement has not been fulfilled, which in its turn prevents Syria from completing the national investigation of the incident in accordance with Article VII of the CWC.

The Convention demands from a State where the use of chemical weapons occurred to render assistance to the OPCW fact-finding activities. The Secretariat is supposed to create favourable conditions for the cooperation of the inspected State Party.

In the case of Khan Shaykhun, the Syrian side was practically deprived of the opportunity to render any assistance to the Secretariat in the part of the investigation that was conducted on the territory of a "neighbouring State", although it is an obligation of the Syrian Arab Republic under the Convention. The latter creates an impression: in the course of the investigation it was considered that the Syrian government was involved in this incident, whereas the FFM team is supposed to "refrain from any action or activity incompatible with their impartial and international nature of their duties", as envisaged in Paragraph 6 of the FFM Terms of Reference.

Furthermore, the establishment of identities of the interviewees (witnesses/victims) in a "neighbouring State" as well as their relation to the site of the chemical incident in Khan Shaykhun conducted without any involvement of the official authorities of the Syrian Arab Republic cause many questions as to the credibility of the data received from these persons.

Unfortunately, the Secretariat follows the abovementioned practice — in terms of its contacts with the Syrian Government — during the investigation of the alleged incident in the Syrian Al-Lataminah of March 30, 2017.

The investigation by the OPCW would have been more objective and thorough if the composition of the FFM in compliance with Paragraph 8 of the FFM Terms of Reference as well as with Paragraph 44 of the CWC (the Director-General responsibility in appointing the staff) had been formed in a balanced manner and on as wide geographical basis as possible. Contrary to the request of the Russian Federation at the 54th Meeting of the Executive Council, the Secretariat has not disclosed the list of countries, whose representatives are included in the Mission. Whereas it would seem very useful for the Executive Council to know whether the FFM has representatives of countries involved into the Syrian conflict.

Finally, the imperative of sending the OPCW inspectors to visit the "Shayrat" airbase stems even from the provisions of the decision taken at the 83rd Session of the Executive Council (EC-83/DEC.5, dated 11 November 2016), which was imposed on the Executive Council by some Member States through voting procedures. In accordance with Paragraph 10 of the abovementioned decision, "the Secretariat shall retain and promptly analyse any information or materials, including samples from the Syrian chemical weapons programme that it considers relevant to existing or future allegations of chemical weapons possession or use". In order to implement this decision the Director-General announced in his Report EC-86/DG.21, dated 21 September 2017, that the Secretariat had begun the process of analysing such information and materials, including samples. In this regard a question emerges, whether the unwillingness of the Secretariat to check the information about the presence of Sarin at the Syrian "Shayrat" airbase derives from the acceptance not only by the FFM but now by the Secretariat as well that there are no grounds to believe that the airbase is "relevant to the allegations of chemical weapons possessions or use"? If it is not the case, then the Secretariat would be well advised to immediately begin to implement the abovementioned provision of the decision, which would by default mean organising an inspection of the "Shayrat" airbase and collecting the relevant samples on site.